

**STATE OF NORTH CAROLINA  
COUNTY OF DURHAM**

**AGREEMENT FOR THE EXECUTION OF A  
HOME INVESTMENT PARTNERSHIPS PROGRAM**

This Contract, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2012, by and between the City of Durham, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter "City"), and Southside Revitalization Phase 1 LP a Missouri limited partnership the mailing address of which is c/o of McCormack Baron Salazar, Inc. (MBS), 720 Olive Street, Suite 2500, St. Louis, Missouri 63101(the "Borrower").

WHEREAS, the City has entered into an Agreement for a HOME Investment Partnerships Program (hereinafter "Funding Agreement") with the U. S. Department of Housing and Urban Development (hereinafter "HUD"); and

WHEREAS, it is the purpose of this Agreement to effect a specified portion of the program approved by the Funding Agreement in accordance with the policies expressed by and declared in Title II of the National Affordable Housing Act of 1990, as amended (hereinafter "Act"); and

WHEREAS, pursuant to said purpose the Borrower is undertaking certain activities and desires to engage the City to render certain assistance in such undertakings.

NOW, THEREFORE, for valuable consideration and mutual promises exchanged between the parties hereto, it is agreed as follows:

**A. SCOPE OF SERVICES:**

1. The activities to be performed pursuant to this Agreement shall be those specified in the Scope of Services in Attachment A to the Loan Agreement between the parties of even date herewith, which is incorporated by reference herein as if fully set forth and under the Project Title:

**Southside Revitalization Phase 1 LP**

**B. DURATION OF AGREEMENT:**

This Contract shall be effective as of the date first written above and shall remain in effect during the period of affordability required by the Act under 24 CFR Part 92.252 or 92.254.

**C. TERMS AND CONDITIONS:**

Southside Revitalization Phase 1 LP  
HOME Agreement

1. The Borrower shall enforce this Agreement through a promissory note, deed of trust and declaration of deed restrictions on all real properties receiving an investment of HOME funds which shall require compliance with all applicable HOME Program requirements. This Agreement shall be considered breached if the Borrower materially fails to comply with any term in this Agreement, and shall result in the termination of this Agreement and the recapture of all HOME funds disbursed to the Borrower.
2. The Borrower shall assume responsibility for managing the day-to-day operations of its HOME program, to assure compliance with program requirements outlined in 24 CFR Part 92, and for taking appropriate action when performance problems arise.
3. The Borrower shall take full responsibility for ensuring that housing it has assisted with HOME funds meets the affordability requirements of 24 CFR 92.252 or 92.254 as applicable, and shall repay its award of HOME funds in full to the City if the housing does not meet the affordability requirements for the specified time period.
4. The Borrower shall retain all repayment, interest, and other return on the investment of HOME funds in a separate local account for use to fund additional eligible HOME activities of the Borrower's choosing and agrees to invest all returns on HOME investments in additional eligible activities before drawing down additional HOME funds from the City.
5. The Borrower shall request disbursement of HOME funds only at the time funds are needed for payment of eligible costs and to request an amount of funds limited to that needed to cover these costs and which can be expended within 15 days from the date funds are disbursed to the City from the U.S. Treasury.
6. The Borrower shall submit a Project Completion report to the City concurrently with the final drawdown request for HOME funds.
7. The Borrower shall require all owners of housing assisted with HOME funds to maintain the housing in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of the Agreement.
8. The Borrower shall, where applicable, review the activities of owners of rental housing assisted with HOME funds to assure compliance with the requirements set out in 24 CFR Part 92 not less than annually. Each review must include an annual on-site inspection to determine compliance with housing codes and the HOME Program requirements. These inspections shall be conducted for each unit in a project during the project's period of affordability.
9. The City shall hold the Borrower responsible for complying with the provisions of this Agreement even when the Borrower designates a third party or parties to undertake all or any part of the program. All third parties must be bound in writing to the same provisions as are required in this Agreement.

10. None of the following or their immediate family members, during the tenure of the subject person or for one year thereafter, shall benefit from activities assisted under this Agreement or have any direct or indirect financial interest in any contract, subcontract or the proceeds thereof for work to be performed in connection with the program assisted under this Agreement: employees, agents, or officials of the Borrower or the City, including members of the governing body, who exercise any function or responsibility with respect to the program. The same prohibition shall be incorporated in all such contracts and subcontracts.

11. The assistance provided under this Agreement shall not be used by the Borrower to pay a third party to lobby the United States government for funding approval, approval of applications for additional assistance, or any other approval or concurrence of HUD required under this Agreement. However, HOME funds may be used to pay reasonable fees for services that are eligible as a program cost.

12. The Borrower shall reimburse the City for any amount of HOME funds determined by HUD to have been improperly expended, and the City shall retain the right to recover any questioned costs or overpayments from the Borrower.

13. Upon termination, the Borrower shall remit any unexpended balance of advanced payments on account of the Grant as well as such other portions of such payments previously received as determined by the City to be due and the action of the City in accepting any such amount shall not constitute a waiver of any claim which the City may otherwise have.

14. The Borrower shall allow the City to carry out monitoring and evaluation activities as determined necessary by the City and HUD.

15. In the event of termination, all personal property and finished or unfinished documents, data, studies, and reports purchased or prepared by the Borrower under this Agreement shall, at the option of the City, become the property of the City.

**D. FUNDING AND PAYMENT:**

1. The City will provide the Borrower with funds for the Project in accordance with the approved budget listed in Attachment A to the Loan Agreement, for the Project (hereinafter "Project Budget") or the actual cost of the Project, whichever is less. The payment procedure under this Contract shall be in accordance with the following method: payment shall be on an expenditure basis upon receipt by the City of a Requisition Form, (form of which shall be provided by the City) which shall reflect expenditures and incurred expenses by budget line item. The Borrower shall also provide support documentation such as invoices for all expenditures included on the Requisition Form.

2. Requests for funds shall be made on a monthly basis, unless otherwise agreed. The Requisition Report shall reach the City prior to the fifth of the month following the month that the expenditure was made

3. Payments under this Agreement are limited to those HOME funds specified in the Project Budget, but in no event will the total compensation and reimbursement, if any, to be paid hereunder exceed the maximum sum of **Two Million Thirty Three Thousand Seven Hundred Thirty Nine and No/100 Dollars (\$2,033,739.00)**.

**E. BUDGET CHANGES AND UNREIMBURSABLE EXPENSES:**

1. Except for changes made in accordance with subsection (2) below, any and all alterations in the approved use of budgeted funds shall be subject to prior review and approval by the City.
2. Funds may be shifted between line items of the Project without prior approval of the City only to the extent that such action does not result in a change in the Project and so long as the adjustment does not exceed ten percent (10%) of all HOME funds.
3. A report of an adjustment of funds not requiring prior approval by the City shall be provided in writing to the City Director of Department of Community Development within three (3) working days after its effective date.
4. Any costs and expenses not covered by the Project Budget attached as Exhibit A to this Agreement, and hence not properly payable from Grant funds, shall be borne entirely by the BORROWER.

**F. RECORDS AND REPORTS:**

1. The Borrower shall maintain and shall make available at reasonable times and places to the City such records and accounts, including property, personnel, and financial records, as are deemed necessary by the City and/or state and federal agencies in order to assure a proper accounting for all project funds.
2. The Borrower shall provide any duly authorized City representative, representative of HUD and the Comptroller General of the United States, at all reasonable times, access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the HOME funds and the fulfillment of this Contract for a period of five years following the completion of all close-out procedures respecting HOME funds, and the final settlement and conclusion of all issues arising out of the HOME loan.
3. The Borrower shall provide a monthly report to the City which notes accomplishments, beneficiaries, problems encountered and changes in work schedule and any other information needed by the City to complete the Annual Performance Report and other reports required by HUD. This monthly report shall also include an accounting of all program income received and/or expended during the month and year to date.
4. The Borrower shall provide an Annual Audit Report performed in compliance with Office of Management and Budget Circular A-133.

**G. FINANCIAL ACCOUNTING:**

1. The Borrower shall establish and maintain fiscal and accounting records in accordance with generally accepted accounting principles and practices.
2. The Borrower shall not commingle funds provided under this Contract with any other funds; the funds provided under this Contract: shall be accounted for and audited separately from all others. However, the Borrower may supplement the funds provided hereunder from other fund sources for the purpose of furthering the Project.
3. Funds provided hereunder are exclusively for the purposes of this Agreement under the terms and conditions of the Agreement, and the Borrower shall not temporarily or permanently shift such funds to other programs or for other purposes for any reason.

**H. INSURANCE AND LIABILITY:**

1. The Borrower's chief fiscal officer or insurer shall provide the City with a Statement assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount consistent with sound fiscal practice and with the coverage deemed necessary by the City for its own employees.
2. Work to be performed as provided herein shall be done by the Borrower as an Independent Contractor. The City shall not be liable for claims for damages or losses arising out of the performance of this Agreement by the Borrower, its employees, officers or agents and the Borrower shall indemnify and hold harmless the City, its officers, agents and employees from all such claims arising under this agreement.

**I. RESIDENT ECONOMIC OPPORTUNITY:**

1. The Borrower shall take affirmative action to ensure that residents of the project area are given maximum opportunity for training, employment and business opportunities.
2. When qualified applicants are available, preference shall be given to residents of the project area in filling all training, business opportunities and jobs generated by the Program even where employment results outside the geographic boundary of the project area.

**J. PUBLICITY:**

The Borrower shall make every effort in its publicity and in other ways, to fully inform the public concerning the Project. Any publicity given to the Project must recognize the City of Durham as the sponsor and the Project being funded by the City through the HOME Investment Partnerships Program. The City will, in all publicity originated by it concerning the Project, recognize the Borrower as the Borrower responsible for carrying out the Project.

**K. SUSPENSION OR TERMINATION FOR CAUSE:**

1. The City, upon written notice to the Borrower, may suspend or terminate payment of HOME funds to the Borrower in whole or in part for cause which shall include, but not be limited to, the following:
  - (a) Ineffective or improper use of HOME funds;
  - (b) Failure to comply with the terms and conditions of this Agreement;
  - (c) Submission to the City of reports which are incorrect or incomplete in any material respect;
  - (d) Suspension of the HOME funds from HUD to the City in whole or part for any reason.
  - (e) Termination Due to Adverse Environmental Impact. This Agreement is conditioned on the City's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. This Agreement will terminate at the conclusion of the environmental review process if the results of the review indicate that the project would have a significant adverse impact on the environment and that this impact cannot be feasibly eliminated or mitigated.
2. The City, upon written notice to the Borrower, may also withhold payment of any unearned portion of the Grant if the Borrower is unable or unwilling to accept any additional conditions that may be provided by law, by executive order, by regulations or by other policy announced by HUD.
3. If the City withholds payment, it shall advise the Borrower in writing what action must be taken as a condition precedent to the resumption of payments.

**L. ASSIGNABILITY:**

This agreement is expressly non-assignable without the prior written consent and approval of the City; nor may the Project be continued by a successor to the Borrower without the prior written consent of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement.

**M. DOCUMENTS OF INCORPORATION:**

This Agreement is expressly made subject to all Attachments hereto, to all of the attachments, provisions, requirements, federal, state and local laws, rules and regulations of the \_\_\_\_\_ day of \_\_\_\_\_, 2012, and of the Funding Agreement between the City and HUD and to any and all requirements, whether federal, state or local, verbal or written, placed upon the City. All of the foregoing are hereby made a part of this Agreement and incorporated herein by reference.

**N. MISCELLANEOUS PROVISIONS:**

1. The singular of any term used in this Agreement shall include the plural, and the masculine shall include the feminine, and vice versa.
2. A signed copy of this Agreement shall be considered as an original.

Southside Revitalization Phase 1 LP  
HOME Agreement

3. Service of all notices under this Agreement shall be sufficient if given personally, by registered or certified mail, returned receipt requested, and mailed to the party involved at the address and to the attention of the person set forth below, or to such other person or address as said party may provide in writing from time to time. Any such notice mailed to such address shall be effective upon the date received as shown by the returned receipt or otherwise:

CITY OF DURHAM

City of Durham  
101 City Hall Plaza  
Durham, North Carolina 27701  
Attn: Director, Department of Community Development

BORROWER

Southside Revitalization Phase 1 LP  
c/o McCormack Baron Salazar, Inc.  
720 Olive Street  
Suite 2500  
St. Louis, Missouri 63101

Southside Revitalization Phase 1 LP  
HOME Agreement

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed on its behalf and attested; and the Agency has caused the same to be duly executed and attested on its behalf as of the date first written above.

**CITY OF DURHAM**

By: \_\_\_\_\_  
Thomas J. Bonfield, City Manager

Attest: Durham

By: \_\_\_\_\_  
City Clerk

**SOUTHSIDE REVITALIZATION PHASE 1 LP**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Attest: Southside Revitalization Phase 1 LP

By: \_\_\_\_\_  
Secretary  
(Please affix corporate seal here)

Southside Revitalization Phase 1 LP  
HOME Agreement

**State of North Carolina  
County of Durham**

I, a Notary Public in and for the aforesaid County and State certify that \_\_\_\_\_ personally appeared before me this day, and acknowledged that he/she is the \_\_\_\_\_ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing Agreement was signed in its corporate name by Thomas J. Bonfield, its City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Notary Public: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**State of Missouri  
City of St. Louis**

I, a Notary Public in and for the aforesaid city and state, certify that \_\_\_\_\_ personally appeared before me this day and stated that he/she is \_\_\_\_\_ Secretary of Southside Revitalization Phase 1 LP, a limited partnership and that by authority duly given and as the act of the limited partnership, the foregoing Agreement with the City of Durham was signed in its name by Kevin McCormack, its President, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Notary Public: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**Pre-Audit Certification**

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. This the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
City of Durham Finance Officer